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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	CC Docket No. 94-54

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**COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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SUMMARY

For ten years, CMRS providers have enjoyed an explicit right to receive compensation for terminating traffic that originates on the landline network. For ten years, this right has been largely ignored in the marketplace. PCIA accordingly commends the Commission for proposing promptly to implement interim compensation arrangements for CMRS/LEC interconnection. Expeditious adoption of new rules is critical in order to expedite the deployment and enhance the development of next-generation mobile services.

Scope. Compensation arrangements must be mandated for both broadband and narrowband CMRS. Both categories of services terminate landline-originating calls over networks consisting of switches, transport links, and end user connections. Moreover, both categories produce significant revenues for landline LECs. Consequently, the regulatory parity directive of Section 332, as well as technical and economic considerations, compel adoption of terminating compensation mechanisms for both broadband and narrowband CMRS. The specific mechanisms, however, must be different in light of obvious distinctions in traffic flow.

Compensation for broadband CMRS. Existing compensation arrangements for cellular carriers are inequitable and economically inefficient. Virtually without exception, such arrangements result in the CMRS provider paying the LEC on all calls, and the LEC paying the CMRS provider on none. On an interim basis, the Commission should mandate bill and keep for all network elements from the tandem switch to the end user, rather than just for local switching and call termination, as proposed in the *Notice*. The costs of the trunks interconnecting the mobile switch and

LEC switch should be shared. Such compensation arrangements are appropriate because CMRS and LEC networks perform essentially identical functions, bill and keep is administratively simple, PCS/LEC traffic flows are roughly equivalent in both directions, and bill and keep will promote truly even traffic flows as CMRS providers and LECs are accorded parity of treatment. Moreover, under PCIA's approach, each carrier will be motivated to recover its network costs as efficiently as possible. Any long-term plan should assure that each carrier is treated as a peer and that each recovers its costs in an equitable and efficient manner.

Compensation for narrowband CMRS. As with broadband CMRS, existing paging interconnection agreements are wholly one-sided. Even though traffic flows are one hundred percent mobile-terminating, paging providers pay LECs for all calls and receive compensation for none. Because all traffic flows from the LEC to the narrowband CMRS provider, the LEC should pay the full cost of the facilities connecting its switch to the CMRS provider's network. In addition, narrowband CMRS providers should be entitled to recover the reasonable costs of their network facilities used in terminating calls.

The need for nationwide rules. The Commission should mandate these compensation mechanisms for both interstate and intrastate traffic. LECs have been able to use state jurisdiction over intrastate interconnection as a shield against fair compensation arrangements, and some states have explicitly denied compensation to CMRS providers. Moreover, CMRS services are inherently interstate; service areas transcend state lines and classification of individual calls as interstate or intrastate often in arbitrary. The Commission has authority to preempt inconsistent state requirements both under Section 332, which articulates a pervasive federal regulatory scheme for CMRS and preempts state jurisdiction over CMRS rates and entry, and under traditional inseparability analysis. The 1996 Communications Act confirms and further buttresses the Commission's preemptive authority by explicitly directing the Commission to adopt interconnection rules that provide for reciprocal compensation (and stating that bill and keep is an appropriate alternative), and by prohibiting state rules that are inconsistent with or undermine federal requirements.

Public disclosure. The Commission should require CMRS/LEC interconnection agreements to be filed as Section 211 contracts. Contracts between carriers are mutually enforceable and cannot be altered by the filing carrier; the enforceability of carrier-carrier tariffs is not as clear. In addition, the Commission has virtually the same authority to assure contracts are just and reasonable as it has with respect to tariffs. Finally, contracts better comport with the co-carrier status of CMRS providers, and reflect the way landline LECs order business arrangements among themselves.

Compensation for originating and terminating traffic for IXCs. CMRS providers should be compensated for the use of their networks by IXCs. With respect to direct connections, which are becoming increasingly common, the parties should privately negotiate interconnection arrangements. Neither party has market power, and both have an incentive to achieve a mutually satisfactory agreement. Where interconnection occurs through a LEC tandem, the LEC's access revenues should be rationally divided in recognition of the fact that the LEC is not performing local switching, inter-office transport, and call termination functions. In both cases, CMRS providers should not be required to file tariffs because they cannot act anticompetitively, and a tariffing requirement would merely increase costs and drive up subscriber rates.

* * *

The Commission should adopt rules consistent with the foregoing recommendations as quickly as possible. Economically rational interconnection arrangements are critically important to the development and growth of broadband and narrowband PCS. As the experience of the last ten years demonstrates, such arrangements will not prevail in the absence of Commission intervention.

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COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),[1] by its attorneys, respectfully submits its comments regarding the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[2] The *Notice* seeks comment on the appropriate means of compensating local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers for terminating interconnected traffic. PCIA

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 95-505 (released Jan. 11, 1996) ("*Notice*").

commends the Commission for initiating this important proceeding, and sets forth herein its recommendations for providing fair compensation to both broadband and narrowband CMRS providers.

I. GENERAL COMMENTS

PCIA, as the trade association for the CMRS industry, has a vital interest in ensuring that LEC-CMRS interconnection is governed by equitable and economically efficient rules. Indeed, ten years ago, PCIA's predecessor, Telocator, asked the Commission to adopt clear ground rules to facilitate interconnection between common carrier mobile service providers and LECs. This request was necessitated by the mounting frustration of new cellular carriers over the unavailability of technically reasonable and economically feasible interconnection arrangements.[3] In a series of strong, far-reaching decisions, the Commission provided much-needed guidance and set the stage for generally improved relations between mobile service providers and LECs.[4]

The fundamental holding of these decisions -- which was explicitly extended to all CMRS providers in the Second Report and Order in GN Docket No. 93-252[5] -- is

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[3] *See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd 5408, 5450 (1994) ("The period following the Commission's early licensing of cellular service was marked . . . by difficult negotiations between LECs and cellular licensees . . . For a time, several BOCs refused to provide trunkside interconnection to nonwireline carriers").

[4] *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 59 Rad. Reg.2d 1275 (1986); *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services* (Interconnection Delaratory Ruling), 2 FCC Rcd 2910 (1987), *recon.*, 4 FCC Rcd 2369 (1989) (Interconnection Reconsideration Order).

[5] *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1498-1501 (1994).

that mobile service providers and LECs are co-carriers. Flowing from this tenet, the interconnection orders impose several requirements on LECs, including good faith negotiation, provision of any form of interconnection reasonably requested by a mobile common carrier, prohibition of recurring charges for the use of NXX codes by Type 2-connected carriers, prohibition on reclaiming a disproportionate share of needed numbers from a CMRS competitor, and compensation of CMRS providers for the reasonable costs incurred in terminating traffic that originates on LEC facilities.[6]

Notwithstanding these clear requirements, to PCIA's knowledge, no CMRS interconnection agreement explicitly provides terminating compensation to the CMRS provider. Indeed, LECs have steadfastly opposed providing terminating compensation to CMRS licensees, even though they readily enter such agreements both among themselves and, in certain states, with competitive access providers ("CAPs"). With the deployment of both broadband PCS and advanced messaging offerings already underway, further Commission action regarding LEC-CMRS compensation is imperative in order to assure that this important policy is faithfully implemented for existing and next generation mobile services. As the *Notice* recognizes:

> existing general interconnection policies may not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service. ... If commercial mobile radio services ... are to begin to compete directly against LEC wireline services, it is important that the prices, terms, and

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[6] These decisions also specify that interstate charges associated with interconnection must be cost-based. *See Interconnection Declaratory Ruling*, 2 FCC Rcd at 2915.

> conditions of interconnection arrangements not serve to buttress LEC market power against erosion.[7]

To this end, the Commission proposes that a "bill and keep" approach apply to local switching and call termination, at least for an interim period, seeks comment on whether it should preempt state jurisdiction over LEC-CMRS compensation arrangements, and inquires whether new compensation policies should apply to broadband PCS, broadband CMRS, or all CMRS.

PCIA strongly commends the Commission for seeking to assure economically rational interconnection between LECs and CMRS providers. The Commission's proposals are a good first step, but they need to be expanded and clarified in certain respects. PCIA's recommendations in this regard -- including an expanded bill and keep plan for broadband CMRS pending development of a long-term approach, the provision of terminating compensation for narrowband CMRS, and preemption of state jurisdiction over LEC-CMRS interconnection -- are discussed below.

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[7] *Notice*, ¶ 2.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC

A. COMPENSATION ARRANGEMENTS

1. EXISTING COMPENSATION ARRANGEMENTS ARE PATENTLY INADEQUATE

The Commission's conclusion that existing compensation arrangements for both broadband and narrowband CMRS-LEC interconnection are inadequate is indisputable. To PCIA's knowledge, every broadband CMRS interconnection agreement forces the mobile carrier to pay the LEC to terminate mobile-originating traffic, but does not obligate the LEC to pay the mobile carrier for terminating LEC-originating traffic. Indeed, broadband CMRS providers generally must pay some transport element to the LEC, even on landline-originating calls.

The situation is, if anything, worse for narrowband CMRS. Paging carriers currently pay LECs for the "privilege" of terminating landline-originating traffic. They receive no compensation whatsoever, even though they generate considerable financial benefits for LECs by stimulating usage of the local telephone network and, frequently, generating IXC access charges.[8]

Plainly, the status quo for broadband and narrowband CMRS is unacceptable. Existing arrangements impede business expansion, impose unwarranted costs that

[8] In accordance with the Commission's preferred organization, *Notice*, ¶ 133 n.171, Section IV of these Comments explains why the Commission must adopt a rational compensation scheme for narrowband CMRS.

needlessly raise subscriber rates, and impair competition. Ten years after the Commission first exercised its authority in this area, intervention is once again necessary to assure that its goals are realized. As discussed below, however, the Commission must recognize key differences between broadband and narrowband CMRS in crafting appropriate models for terminating compensation.

2. FOR BROADBAND CMRS, BILL AND KEEP SHOULD BE EXPANDED BEYOND LOCAL SWITCHING AND CALL TERMINATION

The *Notice* proposes to adopt a bill and keep approach to LEC-CMRS compensation, at least for an interim period while a cost-based approach can be developed. In doing so, the Commission states that bill and keep is in the public interest because: (1) it will prevent LECs from using their market power to charge excessive interconnection rates; (2) it is economically efficient if traffic flow is balanced *or* actual interconnection costs are so low that there is little difference between a cost-based rate and zero cost; and (3) it is administratively simple.[9] Nonetheless, the Commission proposes to apply bill and keep only to the costs of local switching and call termination.[10]

PCIA supports a bill and keep approach for broadband LEC-CMRS interconnection on an interim basis,[11] but believes that limiting application of bill and

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[9] *Id.*, ¶ 61.

[10] *Id.*, ¶ 62 (emphasis added).

[11] As Section II.A.3 of the Comments demonstrates, bill and keep is inappropriate for narrowband CMRS/LEC interconnection.

keep to local switching and call termination will not promote economically efficient interconnection. Under the proposal, as under current interconnection agreements, broadband CMRS providers still would pay transport and tandem-switching costs on landline-terminating calls, even though they would not receive compensation for similar functions in their networks on mobile-terminating calls. In addition, broadband carriers still would be required to pay the full cost of the trunks interconnecting the mobile and LEC switches, even though such facilities handle two-way traffic and therefore benefit both carriers. Moreover, under the Commission's proposal, LECs could seek to shift costs to elements not covered by bill and keep in order to protect their existing revenues.

To avoid these problems, the Commission should adopt an interim plan for terminating compensation by LECs and broadband providers that consists of zero-cost termination of traffic by both parties (*i.e.*, each party bears its own transport, switching, and local loop costs), and shared cost of the trunks interconnecting the mobile and LEC switches. PCIA's proposed interim plan has a number of distinct advantages, all of which are consistent with the policy goals underlying the Commission's bill and keep proposal.

First, PCIA's plan recognizes that broadband CMRS providers and LECs have overlapping, ubiquitous networks and use the same network elements in terminating calls. Acknowledgment of the fact that CMRS providers have full-service networks in their own right is an important step towards preventing LECs from basing the price of interconnection on anything other than its cost. Such an outcome is in the public interest because it will remove unwarranted costs that may limit the affordability of broadband CMRS services, and eliminate a significant obstacle to local service competition.

Second, using bill and keep on an interim basis gives broadband CMRS providers much-needed leverage in negotiating long-term interconnection agreements with LECs. At present, the LECs, as the gate keepers for access to every household and business in their service areas, negotiate interconnection agreements from a position of absolute strength. An FCC-mandated, interim bill and keep plan will tend to level the playing field as negotiations between PCS providers and LECs move into full swing.

Third, zero-cost interconnection is economically efficient because it roughly reflects the current traffic flows for PCS-LEC interconnection. Even now, without bill and keep, the first operational broadband PCS provider (APC) has disclosed that the flow of PCS-LEC traffic approximately equals the flow of LEC-PCS traffic. Moreover, the Commission can expect that bill and keep will produce essentially even traffic flows, since it removes a significant barrier to co-equal status of CMRS providers and LECs.[12] Given the roughly even flow of traffic and the likely effect of bill and keep in increasing the proportion of LEC-to-mobile calls, and assuming that transport and switching costs are approximately equal for LECs and CMRS providers,

[12] While traffic flows are not currently even for cellular traffic, in order to effectively compete with PCS, cellular carriers can be expected to adopt competitive responses that increase the number of LEC-cellular calls.

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[12] While traffic flows are not currently even for cellular traffic, in order to effectively compete with PCS, cellular carriers can be expected to adopt competitive responses that increase the number of LEC-cellular calls.

bill and keep as expanded by PCIA is an economically rational cost recovery mechanism.

Fourth, an expanded bill and keep approach creates incentives for broadband CMRS providers and LECs each to be as efficient as possible in providing call termination. By forcing each carrier to absorb its own switching and transport costs, bill and keep will motivate all carriers to minimize those costs. Likewise, bill and keep also will prevent LECs from passing their own inefficiencies onto their competitors.

Finally, bill and keep compensation is administratively simple. Because carriers bill only their own customers, they do not need to modify their current billing systems. Bill and keep also avoids the need for the development of new accounting procedures, record-keeping requirements, or the implementation of a complex LEC-CMRS settlements process. By keeping administrative costs low, bill and keep therefore advances the Commission's goal of providing low cost, high quality wireless communications to the American public.

* * *

In the long term, interconnection agreements between broadband CMRS providers and LECs should provide each carrier with the opportunity to recover the direct cost of the facilities it uses to terminate traffic. Any such plan must fully recognize the co-carrier status of CMRS providers, engender efficient investment incentives, and promote competition across the full range of wireless and wireline services. PCIA will consider the recommendations of other commenters and provide additional suggestions regarding a long-term plan in its reply comments. The Commission should not, however, delay adoption of bill and keep on an interim basis while it assesses the merits of various long-term solutions.

3. NARROWBAND CMRS PROVIDERS MUST BE ENTITLED TO RECOVER THE COST OF TERMINATING LEC-ORIGINATED CALLS FROM LECS

The NPRM devotes relatively little attention to the specific circumstances presented by narrowband LEC-CMRS interconnection. Unlike broadband CMRS, where two-way traffic flows make bill and keep an efficient cost recovery mechanism, narrowband LEC-CMRS interconnection involves virtually 100 percent mobile terminating traffic. Consequently, bill and keep is an inappropriate interim solution for narrowband CMRS providers because it provides no compensation for the costs incurred in terminating calls.

To provide fair terminating compensation for narrowband CMRS providers, the Commission should require that LECs pay the entire cost of the the trunks connecting the LEC switch to the narrowband switch. Just as sharing these costs in the broadband context is appropriate because the traffic is two-way, requiring the LEC to bear the full costs in the narrowband context is warranted because all traffic is mobile-terminating. In addition, narrowband CMRS providers should be permitted to charge reasonable fees for the use of their networks in terminating calls. As in the broadband context, narrowband CMRS providers have constructed ubiquitous networks that perform switching, transport, and call termination functions akin to those performed by landline LECs. For interim purposes, a "rough justice" approach might be to permit narrowband CMRS providers to charge LEC access charges less subsidy elements such as the carrier common line and residual interconnection charges.

B. IMPLEMENTATION OF COMPENSATION ARRANGEMENTS

1. NEGOTIATIONS AND TARIFFING

PCIA commends the Commission for recognizing that some regulatory involvement "in the formation and administration of interconnection arrangements between LECs and CMRS providers would help to counter possible abuses of market power and would help ensure that these arrangements are efficient and advance the public interest."[13] At the same time, however, undue regulatory involvement, such as a prescription of permitted interconnection options,[14] would limit the ability of CMRS providers to obtain the technical interconnection most suited to their unique needs. As a middle ground approach, PCIA supports a requirement that LEC-CMRS interconnection arrangements be filed with the Commission.[15]

There are two models for public disclosure of service agreements under the Communications Act: carrier-carrier contracts filed under Section 211, and LEC tariffs filed under Section 203. The Commission tentatively favors tariffs over contracts because, with respect to tariffs, "the regulator has additional mechanisms to protect

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[13] *Id.*, ¶ 88.

[14] *See id.*, ¶ 89.

[15] Of course, under PCIA's recommended approach to compensation, any agreement filed with the Commission should contain only (1) rates for shared use entrance facilities, and (2) terms and conditions. Rates for all other elements of interconnection should be set at zero.

against terms that may be unreasonable or unreasonably discriminatory . . . ."[16] PCIA understands and supports the Commission's desire to oversee LEC-CMRS interconnection in order to assure that arrangements serve the public interest. Nonetheless, as discussed below, PCIA prefers the Section 211 approach.

First of all, the Commission enjoys considerable authority to investigate and prescribe changes to Section 211 contracts:

> Under the *Sierra-Mobile* doctrine, the Commission has the power to prescribe a change in contract rates when it finds them to be unlawful . . . and to modify other provisions of private contracts when necessary to serve the public interest . . . .[17]

To find rates in a Section 211 contract unlawful, the Commission must determine that they are "unjust, unreasonable, unduly discriminatory, or preferential"[18] -- essentially the same standard applied to tariffed rates. Accordingly, the Commission would not abandon its ability to assure fair interconnection by choosing Section 211 over Section 203.

Given that the Commission retains authority to oversee Section 211 contracts, PCIA believes such contracts are preferable to tariffs for two reasons. First, structuring LEC-CMRS interconnection by contract is consistent with the way landline LECs order arrangements among themselves, and therefore reinforces the co-carrier

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[16] *Notice*, ¶ 94.

[17] *Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987) (citing *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353-55 (1956); *United Gas Pipeline Co. v. Mobile Gas Corp.*, 350 U.S. 332, 344 (1956)). *See also ACC Long Distance Corp. v. Yankee Microwave, Inc.*, 10 FCC Rcd 654, 656-57 (1995).

[18] *Western Union*, 815 F.2d at 1501 n.2.

status of CMRS providers. In contrast, structuring LEC-CMRS interconnection by tariff makes it seem like CMRS providers are purchasers of access services rather than co-carriers exchanging traffic with landline LECs.

Second, Section 211 contracts clearly may not be abrogated by subsequently filed, unilateral tariffs.[19] The law appears unsettled, however, regarding the enforceability of carrier-carrier agreements which either incorporate or are themselves filed as tariffs. As a minimum, it appears that such agreements, to be mutually enforceable, must explicitly disavow the filing carrier's ability to alter the rates or terms by tariff.[20]

Against this background, PCIA urges the Commission to require LEC-CMRS interconnection agreements to be stand-alone contracts filed under Section 211, with no reference to or incorporation of rates or terms in LEC tariffs. Any information that might identify the CMRS provider should be deleted, in order to assure that the cost structure and specific interconnection arrangements of individual CMRS competitors are not revealed. In the alternative, if the Commission requires that interconnection agreements be filed as contract tariffs under Section 203, it should state that any unilateral changes by the LEC to such tariffs will be presumed unreasonable and required to meet a heavy burden of justification.[21]

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[19] *See Bell Telephone Co. of Pa. v. FCC*, 503 F.2d 1250, 1280-81 (D.C. Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

[20] *See MCI Telecommunications Corp. v. FCC*, 822 F.2d 80 (D.C. Cir. 1987).

[21] *Cf.* 47 C.F.R. § 61.49(e) (1994) (showing required for above-cap rate changes under price cap regulation).

2. JURISDICTIONAL ISSUES

PCIA urges the Commission to preempt state regulation of LEC-CMRS interconnection. A uniform, nationwide approach to interconnection is essential because CMRS services, as mobile offerings, inherently operate without regard to jurisdictional boundaries. Inconsistent state regulation therefore complicates the deployment of CMRS services, which generally are licensed to cover areas that transcend state borders.

Moreover, several states recently have taken actions that undermine the right of CMRS providers to obtain terminating compensation. For example, Connecticut, Florida, and North Carolina all have denied mutual compensation to CMRS providers, even while, in some cases, establishing mutual compensation rights for competitive LECs. Such actions establish dangerous precedents that tread on the Commission's fundamental policy objective of promoting the growth and development of the CMRS industry.[22]

The Commission has sufficient authority to mandate bill and keep (for broadband CMRS) and terminating compensation (for narrowband CMRS) for both interstate and intrastate traffic. As recognized in the Notice, there are two independent

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[22] Such state rules are also inconsistent with the Commission's longstanding interconnection orders. Those decisions held that mutual compensation is an integral part of both the co-carrier status of CMRS providers and the obligation to negotiate reasonable interconnection in good faith, and emphasized that the Commission "has plenary jurisdiction to require that the terms and conditions of [CMRS] interconnection must be negotiated in good faith [because] the conduct of interconnection negotiations can not be separated into interstate and intrastate components." *Interconnection Declaratory Ruling*, 2 FCC Rcd at 2912.

bases for such authority. First, the Commission enjoys explicit authority under Section 332(c) of the Communications Act[23] to preempt any state regulation of LEC-CMRS interconnection that either serves as a barrier to entry into the CMRS market, or defeats a CMRS provider's right to reasonable interconnection.[24] Second, the Commission has authority to preempt any state regulations that are inconsistent with federal requirements under the "inseparability" doctrine as described in *Louisiana Public Service Commission v. FCC*.[25] The 1996 Communications Act further buttresses this pre-existing authority.

a. SECTION 332(c) OF THE COMMUNICATIONS ACT PREEMPTS STATE REGULATION OF LEC-CMRS INTERCONNECTION

Section 332(c) "expresses a clear intent to preempt state law"[26] regarding LEC-CMRS interconnection. It does so by explicitly prohibiting states from regulating entry of, and rates charged by, CMRS providers, and expressly provides for FCC-supervised LEC-CMRS interconnection. Moreover, this section is undergirded by a Congressional commitment to foster the development of a nationwide CMRS network.

The plain language of Section 332(c) prohibits state entry and rate regulation: "no State or local government shall have any authority to regulate the *entry of or the*

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[23] 47 U.S.C. § 332(c).

[24] *Notice*, ¶ 111.

[25] 476 U.S. 355, 370 (1986) ("*Louisiana PSC*").

[26] *Louisiana PSC*, 476 U.S. at 368.

rates charged by any commercial mobile radio service . . . ."[27] Therefore, with respect to narrowband CMRS, where all traffic is mobile-terminating, this section clearly preempts state regulation of interconnection rates, because the fees charged by narrowband providers to terminate LEC traffic are indisputably CMRS rates. Regarding broadband CMRS, which is characterized by two-way traffic, state regulation of interconnection fees also represents prohibited rate regulation because: (1) the fees charged by broadband CMRS providers to terminate LEC traffic fall squarely within the definition of CMRS rates; and (2) the interconnection fees charged by LECs to terminate CMRS traffic must inevitably be passed on to CMRS customers in the form of higher rates. In addition, it would be nonsensical to place regulatory oversight for interconnection rates charged by CMRS providers to LECs at the FCC, while permitting the states to regulate interconnection rates charged to CMRS providers by LECs. Further, state regulation of LEC-CMRS interconnection could rise to the level of an impermissible barrier to entry if states deny any form of terminating compensation (as some already are doing) or set the interconnection fees charged by LECs at a level high enough to drive all but the best-established wireless carriers out of business.

Section 332(c) also highlights the Commission's jurisdiction to order LEC-CMRS interconnection under Section 201, "upon reasonable request of any person providing commercial mobile service."[28] The legislative history of Section 332(c)(1)(B) states that

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[27] 47 U.S.C. § 332(c)(3)(A) (emphasis added).

[28] 47 U.S.C. § 332(c)(1)(B).